

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

ELGRET L. BURDEX,)	
)	
Plaintiff,)	
vs.)	NO. CIV-10-119-D
)	
PHILLIP SMITH, et al.,)	
)	
Defendants.)	

ORDER

Plaintiff, who appears *pro se*, brought this action pursuant to 42 U. S. C. § 1983. He alleges that his constitutional rights were violated during his confinement as a pretrial detainee. Pursuant to 28 U.S.C. §636(b)(1)(B), the matter was referred to United States Magistrate Judge Doyle W. Argo for initial proceedings. One of the named defendants, Dr. Jay Belt, filed a motion to dismiss, to which Plaintiff timely responded.

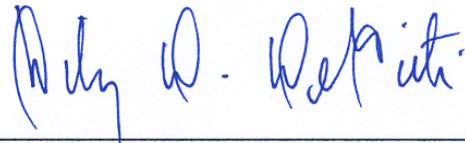
On August 31, 2010, Judge Argo filed a Report and Recommendation [Doc. No. 57]. He concluded that the Complaint, as drafted, failed to state a claim for relief against Dr. Belt. However, he also concluded that the deficiencies in the allegations could arguably be cured by amendment. Accordingly, Judge Argo recommended that the Court grant the motion and dismiss the claims against Dr. Belt without prejudice.

In the Report and Recommendation, Judge Argo advised the parties of their right to file objections to the findings and conclusions set forth therein; he scheduled a September 20, 2010 deadline for filing such objections. He also expressly cautioned the parties that a failure to timely file objections would result in a waiver of the right to appellate review of the matters determined in the Report and Recommendation.

The deadline for filing objections has expired, and no party has objected. Accordingly, the Report and Recommendation [Doc. No. 57] is adopted as though fully set forth herein. The claims asserted against Dr. Jay Belt are dismissed without prejudice.

Although Plaintiff did not object to the Report and Recommendation, the Court file reflects that he has filed a motion for leave to file an amended complaint and a brief in support of that motion [Doc. Nos. 58 and 59]. The deadline for responding to that motion has not yet expired. Because this case remains under referral, a ruling on the motion for leave to amend should be determined by Judge Argo rather than by the undersigned.

IT IS SO ORDERED this 8th day of October, 2010.



TIMOTHY D. DEGIUSTI
UNITED STATES DISTRICT JUDGE